MONTANA LEGISLATIVE HISTORY

Chapter 495 19 89

Bill H 422 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Feb 10	✓ C	Hearing Date(s)	Mar 14	✓ C
	Feb 15	✓ C			C
		C			C
		C			C
Date Out	Feb 15	✓ C		Mar 15	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

3/06	REFERRED TO TAXATION		
3/30	HEARING		
3/31	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
4/03	2ND READING CONCURRED	50	0
4/05	3RD READING CONCURRED	47	2
	RETURNED TO HOUSE WITH AMENDMENTS		
4/10	2ND READING AMENDMENTS CONCURRED	93	2
4/11	3RD READING AMENDMENTS CONCURRED	97	1
4/18	SIGNED BY SPEAKER		
4/19	SIGNED BY PRESIDENT		
4/19	TRANSMITTED TO GOVERNOR		
4/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 593 EFFECTIVE DATE: 4/20/89		

HB 421 INTRODUCED BY NELSON, R., ET AL.
PROVIDE POSTRETIREMENT ADJUSTMENT FOR CERTAIN RETIRED PUBLIC EMPLOYEES

1/25	INTRODUCED		
1/26	REFERRED TO STATE ADMINISTRATION		
1/26	FISCAL NOTE REQUESTED		
2/01	FISCAL NOTE RECEIVED		
2/03	FISCAL NOTE PRINTED		
2/07	HEARING		
2/07	COMMITTEE REPORT--BILL PASSED		
2/11	2ND READING PASSED	91	3
2/14	3RD READING PASSED	92	2
	TRANSMITTED TO SENATE		
2/15	REFERRED TO STATE ADMINISTRATION		
3/01	HEARING		
3/01	COMMITTEE REPORT--BILL CONCURRED		
3/03	2ND READING CONCURRED	48	0
3/06	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		
3/10	SIGNED BY SPEAKER		
3/10	SIGNED BY PRESIDENT		
3/11	TRANSMITTED TO GOVERNOR		
3/16	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 115 EFFECTIVE DATE: 7/01/89		

HB 422 INTRODUCED BY EUDAILY
AMEND LIVING WILL ACT AS TO PEOPLE WHO MAY WITHHOLD LIFE-SUSTAINING PROCEDURE

1/25	INTRODUCED		
1/26	REFERRED TO JUDICIARY		
2/10	HEARING		
2/15	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/18	2ND READING PASSED	88	5
2/21	3RD READING PASSED	87	6
	TRANSMITTED TO SENATE		
2/28	REFERRED TO JUDICIARY		
3/14	HEARING		
3/15	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/16	2ND READING CONCURRED	47	0

3/18	3RD READING CONCURRED	46	0
	RETURNED TO HOUSE WITH AMENDMENTS		
3/30	2ND READING AMENDMENTS CONCURRED	94	2
3/31	3RD READING AMENDMENTS CONCURRED	91	3
4/06	SIGNED BY SPEAKER		
4/06	SIGNED BY PRESIDENT		
4/07	TRANSMITTED TO GOVERNOR		
4/08	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 475 EFFECTIVE DATE: 4/08/89		

HB 423 INTRODUCED BY GRADY, ET AL.
AUTHORIZE PERMIT SYSTEM FOR TRANSPORTATION OF SHEEP

1/25	INTRODUCED		
1/26	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.		
1/26	FISCAL NOTE REQUESTED		
2/01	FISCAL NOTE RECEIVED		
2/03	HEARING		
2/03	FISCAL NOTE PRINTED		
2/07	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/09	2ND READING PASSED	97	3
2/11	3RD READING PASSED	89	3
	TRANSMITTED TO SENATE		
2/13	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.		
3/03	HEARING		
3/04	COMMITTEE REPORT--BILL CONCURRED		
3/06	2ND READING CONCURRED	50	0
3/08	3RD READING CONCURRED	48	2
	RETURNED TO HOUSE		
3/14	SIGNED BY SPEAKER		
3/14	SIGNED BY PRESIDENT		
3/15	TRANSMITTED TO GOVERNOR		
3/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 175 EFFECTIVE DATE: 10/01/89		

HB 424 INTRODUCED BY GRADY
REQUIRE TREASURER TO ACKNOWLEDGE SIGNATURES

1/25	INTRODUCED		
1/26	REFERRED TO LOCAL GOVERNMENT		
2/02	HEARING		
2/03	COMMITTEE REPORT--BILL PASSED AS AMENDED AND PLACED ON CONSENT CALENDAR		
2/07	3RD READING PASSED	98	0
	TRANSMITTED TO SENATE		
2/08	REFERRED TO LOCAL GOVERNMENT		
3/09	HEARING		
3/10	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/11	2ND READING CONCURRED	45	0
3/14	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE WITH AMENDMENTS		
3/16	2ND READING AMENDMENTS CONCURRED	88	0
3/17	3RD READING AMENDMENTS CONCURRED	94	0

HOUSE BILL NO. 422

INTRODUCED BY EUDAILY

IN THE HOUSE

JANUARY 25, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 26, 1989	FIRST READING.
FEBRUARY 15, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED. STATEMENT OF INTENT ADOPTED.
FEBRUARY 16, 1989	PRINTING REPORT.
FEBRUARY 18, 1989	SECOND READING, DO PASS.
FEBRUARY 20, 1989	ENGROSSING REPORT.
FEBRUARY 21, 1989	THIRD READING, PASSED. AYES, 87; NOES, 6.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 28, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 15, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 16, 1989	SECOND READING, CONCURRED IN.
MARCH 18, 1989	THIRD READING, CONCURRED IN. AYES, 46; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 30, 1989	RECEIVED FROM SENATE.
	SECOND READING, AMENDMENTS CONCURRED IN.
MARCH 31, 1989	THIRD READING, AMENDMENTS CONCURRED IN.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

INTRODUCED BY House BILL NO. 422

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LIVING WILL ACT TO ALLOW A DECLARANT TO DIRECT EMERGENCY MEDICAL SERVICES PERSONNEL TO WITHHOLD LIFE-SUSTAINING PROCEDURES; TO LIMIT THE EFFECT OF A REVOCATION OF A DECLARATION COMMUNICATED TO SOMEONE OTHER THAN A PHYSICIAN OR OTHER HEALTH CARE PROVIDER; AMENDING SECTIONS 50-9-102, 50-9-104, AND 50-9-204, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-9-102, MCA, is amended to read:

"**50-9-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Attending physician" means the physician selected by or assigned to the patient, who has primary responsibility for the treatment and care of the patient.

(2) "Declaration" means a document executed in accordance with the requirements of 50-9-103.

(3) "Emergency medical services personnel" means paid or volunteer firefighters, police, paramedics, emergency medical technicians, or other rescue squads acting within the ordinary course of their profession.

~~(3)~~(4) "Health care provider" means a person who is licensed or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession.

~~(4)~~(5) "Life-sustaining procedure" means any medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the dying process and includes first response procedures administered by emergency medical services personnel.

~~(5)~~(6) "Physician" means a person licensed under Title 37, chapter 3, to practice medicine in this state.

~~(6)~~(7) "Qualified patient" means a patient who has executed a declaration in accordance with this chapter and who has been determined by the attending physician to be in a terminal condition.

~~(7)~~(8) "Terminal condition" means an incurable or irreversible condition that, without the administration of life-sustaining procedures, will, in the opinion of the attending physician, result in death within a relatively short time."

Section 2. Section 50-9-104, MCA, is amended to read:

"**50-9-104. Revocation of declaration.** (1) A declaration may be revoked at any time and in any manner by which the declarant is able to communicate his intent to revoke, without regard to mental or physical condition. A revocation is effective only as to the attending physician

or any health care provider acting under the guidance of that physician upon communication to the physician or health care provider by the declarant or by another to whom the revocation was communicated. A revocation communicated to a person other than the attending physician or a health care provider is not effective unless the attending physician is informed of it before the qualified patient is in need of life-sustaining procedures.

(2) The attending physician or health care provider shall make the revocation a part of the declarant's medical record."

Section 3. Section 50-9-204, MCA, is amended to read:

"**50-9-204. Immunities.** (1) In the absence of actual notice of the revocation of a declaration, the following, while acting in accordance with the requirements of this chapter, are not subject to civil or criminal liability or guilty of unprofessional conduct:

(a) a physician who causes the withholding or withdrawal of life-sustaining procedures from a qualified patient;

(b) a person who participates in the withholding or withdrawal of life-sustaining procedures under the direction or with the authorization of a physician;

(c) emergency medical services personnel who cause or participate in the withholding or withdrawal of

life-sustaining procedures under the direction of or with the authorization of a physician;

~~(c)~~(d) ~~the~~ a health care facility in which ~~the~~ withholding or withdrawal occurs.

(2) A physician is not subject to civil or criminal liability for actions under this chapter that are in accord with reasonable medical standards."

NEW SECTION. **Section 4. Applicability.** [This act] applies to declarations made after [the effective date of this act].

-End-

Form CS-32
Rev. 1985

STATUS SHEET

51 LEGISLATIVE SESSION

JUDICIARY COMMITTEE

BILL NUMBER	ENTERED COM. DATE	DATE CONSIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CONCURRED IN DATE	BE NOT CONCURRED IN DATE	BE CONCURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
HB 414	1-26	2-7	TABLED ON 2-13								
HB 422	1-26	2-10	2-15			2-15					
HB 425	1-26	2-7	2-9			2-9					
HB 443	1-27	2-8	2-8	2-8							
HB 445	1-27	2-7	TABLED ON 2-9								
HB 454	1-27	1-31	1-31	1-31							
HB 459	1-27	2-9	2-9			2-9					
HB 450	1-27	2-8	2-10			2-10					
HB 470	1-30	2-8	2-8	2-8							
HB 473	1-30	2-14	TABLED ON 2-15								
HB 480	1-30	2-10	2-10			2-10					
HB 489	1-30	2-10	2-10	2-10							
HB 491	1-30	2-10	2-10			2-10					
HB 492	1-30	2-10	2-10	2-10							

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

8

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Brown, on February 10, 1989, at 8:08 a.m.

ROLL CALL

Members Present: All members were present.

Members Excused: None.

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: Rep. Brown announced the committee would hear HB 390, HB 491, HB 492, HB 493, HB 495, HB 422, HB 480 and HB 489 and then begin executive action.

HEARING ON HOUSE BILL 480

Presentation and Opening Statement by Sponsor:

Rep. Knapp opened the hearing saying that HB 480 is a bill to clean up an oversight. He said he would allow Don MacDonald to explain the content of the bill and the amendments.

Testifying Proponents and Who They Represent:

Don MacDonald, Missoula citizen
Janan Jones, First Interstate Bank of Missoula

Proponent Testimony:

Don MacDonald told the committee the reason for the bill is that the existing legislation isn't broad enough to cover old escrow files. The problem is that through the years the banks accumulate escrow files. In the case of First Interstate Bank of Missoula, many thousands of these files had accumulated through the years. It creates a problem. Therefore, this bill would provide a procedure for abandoning old escrow files. Mr. MacDonald also distributed the current amendments to HB 480. (See EXHIBIT 1)

Janan Jones rose in support of HB 480.

question. That is important in the legal profession in order to advise clients and also for the courts to help render decisions. HB 492 is a uniform law that has been adopted in most every state that has a uniform disposition of community property rights at death.

Testifying Proponents and Who They Represent:

Robert Sullivan, Commissioner appointed to the National Conference of Commissioners on Uniform State Laws

Proponent Testimony:

Robert Sullivan provided written testimony which was submitted to the committee by Rep. Gary Spaeth. (See EXHIBIT 8)

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

No questions were asked.

Closing by Sponsor: Rep. Spaeth closed.

DISPOSITION OF HOUSE BILL 492

Motion: A DO PASS motion was made by Rep. Addy, motion seconded by Rep. Darko.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken on the DO PASS motion and CARRIED unanimously.

HEARING ON HOUSE BILL 422

Presentation and Opening Statement by Sponsor:

Rep. Eudaily stated that this bill is intended to bring emergency medical services within the provisions of the Living Will Act so that a person who has made a living will and is dying at home will not be revived by Emergency Medical Service (EMS) personnel. Secondly, the bill restricts revocation of a declaration when it is made to someone other than the attending physician or health care provider. Specifically, the bill provides that a revocation made to a third party will not be effective unless

revocation is communicated to the attendant physician before the qualified patient is in need of the life sustaining procedures. Thirdly, the bill adds EMS personnel to the community section along with doctors, hospitals and others. Rep. Eudaily provided the committee with copies of proposed amendments. (See EXHIBIT 3)

Testifying Proponents and Who They Represent:

Ira Byock, physician practicing in Missoula
Drew Dawson, Chief of Emergency Medical Services Bureau within Department of Health and Environmental Sciences
Connie Westby, private citizen
Tim Bergstrom, Montana Fireman's Association
Owen Warren, American Association of Retired Persons

Proponent Testimony:

Ira Byock spoke in support of HB 422 saying that this bill is a very important measure which seeks to correct what appears to have been an oversight in the initial Living Will Act. He said he is in a unique position to be interested in this bill because he practices full time emergency medicine. As an emergency physician he deals with life threatening illnesses as a course of daily practice. He also supervises emergency medical technicians in the stressful positions that they are in, including recessitation in out of hospital situations. For the last eight years he has been connected with hospice programs. There has been great confusion in the past as to what emergency medical technicians are supposed to do. There is a need to further develop communication and cooperation between emergency medical technicians and hospice workers. The history of emergency medicine is that when CPR was developed, initially it was felt to be appropriate only and was developed for unsuspected cardiac arrests, the sort of thing that happens during anesthesia or when somebody collapses at a football game. It has been found to be very appropriate and very effective in that regard. It was never intended to be provided to the terminally ill. It is an inappropriate procedure in those instances. However, our emergency medical protocols have never caught up to that recognition. Emergency medical protocols will talk about the need to institute CPR, except in obvious death situations such as decapitation. Other than that, the emergency medical technicians are bound to start recessitation procedures. The living will, as it was codified by the legislature, was clearly intended to preserve our own sovereignty over our bodies at a time when we were no longer able to speak for ourselves. It did so very effectively in the context of patients in a nursing home or in a hospital. More and more these days the trend is toward home care of patients. In these cases, if emergency is called for transport or some other reason, the emergency medical technicians need to know whether or not they are supposed to recessitate that

patient, should in the context of that transport or in the context of their evaluation and treatment, if a cardiac arrest occurs. What this bill tries to make provision for is the arrest situation that happens out of hospital in a patient who is well prepared and knows that his prognosis is terminal and has gone so far as to execute a living will. There is broad agreement within the hospice community and the emergency medical services community for this kind of provision.

Drew Dawson spoke in support of HB 422 (See EXHIBIT 4). Mr. Dawson also presented the committee with proposed amendments to the bill (See EXHIBIT 5).

Connie Westby spoke in favor of HB 422 (See EXHIBIT 6).

Tim Bergstrom spoke in support of HB 422. He told the committee that the Montana Fireman's Association received a call from the fire chief of the City of Missoula, Chief Charles Gibson, representing the Montana State Fire Chief's Association who wanted Mr. Bergstrom to indicate that his association strongly supports HB 422. The Montana Fireman's Association also supports the bill. It's members respond routinely on emergency medical incidents. HB 422 seeks to provide additional coverage in this area that is very necessary.

Owen Warren, representing the American Association of Retired Persons, spoke in support of HB 422 (See EXHIBIT 7)

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

Rep. Brown asked Ira Byock if he had a reaction to the Health Department's proposed amendments giving the Health Department a heavier role in the process. Dr. Byock said he has no objection to that. He said he had talked to Mr. Dawson and suggested that as part of that process, the Montana Hospice Association be asked for their energies in developing such a protocol and that Home Health Association also be notified. He said the idea of a state protocol is an excellent idea. In general, it's an advance and a good approach and the Department of Health and Environmental Sciences is the logical place to develop such a protocol.

Closing by Sponsor: Rep. Eudaily said that Mr. Dawson's proposed amendments can probably be taken care of in a statement of intent and that is probably the direction the committee

should go on that issue. He said the language in the bill needs more clarification as far as "qualified patient" is concerned. He stated that the protocol was developed in the state of Maryland and he provided a handout from the Maryland EMS News for the committee's perusal (See EXHIBIT 9).

HEARING ON HOUSE BILL 493

Presentation and Opening Statement by Sponsor:

Rep. Strizich opened the hearing saying that this bill is introduced on behalf of the Montana Sheriff's and Peace Officer's Association and provides that the charge currently applicable to criminal convictions be increased in both felonies and misdemeanors. The disposition of these charges is the important part of this bill. It is then amended to provide that these funds will be applied to the financing of the operation of county jails including staff salaries, repair and maintenance and operational costs. Two thirds of the money raised would provide for this while the balance could be used for jail expansion, construction and remodeling. There is a jail crisis across the state and much of what needs to be done requires money.

Testifying Proponents and Who They Represent:

Tom Harrison, Montana Sheriff's and Peace Officer's Association
Mike Schafer, Montana Sheriff's and Peace Officer's Association

Proponent Testimony:

Tom Harrison spoke about the problems of housing prisoners and the costs of running jails and how it has been exacerbated by the decision which resulted in Great Falls from the Deaconess Medical Center case that went to the Supreme Court that now has the county liable for all of those prisoner costs. This is a bill that attempts to address that. It needs to be put in perspective of the state's infrastructure and the counties' infrastructure which, regrettably, over a long period of time was not attended to in the manner it should have been. In many of the counties they are now seeing newer, more modern facilities built. In Lewis and Clark county they have a very adequate new facility including dispatch as well as jail facilities, at a cost of about $4.2 million which the taxpayers of the county were willing to buy. When there is forced expansion of jail facilities, it blows operating costs way out of proportion. Since the onset of the new facility in Lewis and Clark County, the operating budget has increased from $80,000 to $300,000.

Mike Schafer, Sheriff of Yellowstone County, told the committee the counties need financial help to continue to maintain efficient jails. They can no longer have a system where

EXHIBIT 3
DATE 2-10-89
HB 422

Amendments to House Bill No. 422
First Reading Copy

Requested by Representative Eudaily
For the Committee on Judiciary

Prepared by Greg Petesch
February 8, 1989

1. Title, line 8.
Following: "PHYSICIAN"
Insert: ", EMERGENCY MEDICAL SERVICES PERSONNEL,"

2. Page 2, line 25.
Following: "physician"
Insert: ", emergency medical services personnel,"

3. Page 3, line 2.
Following: "the physician"
Insert: ", emergency medical services personnel,"

4. Page 3, line 5.
Following: "physician"
Insert: ", emergency medical services personnel,"

5. Page 3, line 8.
Following: "."
Insert: "A health care provider or emergency medical services personnel to whom a revocation is communicated may honor the revocation. The health care provider or emergency medical services personnel must inform the attending physician of the revocation at the earliest opportunity."

6. Page 4, line 1.
Following: "procedures"
Insert: ",whenever reliable documentation of the declaration is available at the location of the qualified patient in the form of a written document or a necklace or bracelet worn by the qualified patient, or other recognized evidence of the declaration, or"

EXHIBIT 4
DATE 2-10-89
HB 422

HOUSE BILL 422

TESTIMONY OF DREW DAWSON, CHIEF
EMERGENCY MEDICAL SERVICES BUREAU
MONTANA DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

Mr. Chairman and members of the committee. I am Drew Dawson, Chief of the Emergency Medical Services Bureau in the Department of Health and Environmental Sciences. My office is responsible for the training and certification of emergency medical services personnel and for the licensing of ambulance services. I am pleased to testify as a proponent of House Bill 422 with some suggested amendments.

At the request of Representative Eudaily, I solicited, by a conference call, the comments and recommendations of various emergency medical services personnel throughout Montana. This included the Montana Emergency Medical Services Association (representing Montana EMTs) and the Montana Private Ambulance Operators Association (representing Montana's private ambulance services).

Everyone was in agreement that some modifications to the Living Will Act are necessary to clarify the role of the pre-hospital emergency medical care provider. In the current law, it is not clear that the Living Will applies to situations occurring outside of the hospital.

Emergency medical care personnel must, in an instant's time, make a decision about whether to begin Cardiopulmonary Resuscitation for a person in cardiac arrest, or about the type and level of care administered to a terminally ill patient. They simply don't have the ability to contact the person's personal physician and are often faced with conflicting information from family members. The situation is often emotionally charged; it is very difficult for the emergency care provider to know what to do. In an emergency situation, it is nearly impossible for them to review a legal document, such as a living will, or to sort through several different types of documentation. Just because a patient has executed a living will does not necessarily mean he is a qualified patient (i.e. terminally ill). I can declare a living will right now, but not be a qualified patient unless I were to become terminally ill. I certainly would want all possible emergency care administered to me now. Evidence of a living will is not sufficient for emergency care providers; they must <u>also</u> have evidence that they are dealing with a qualified patient.

Because of the uncertainty in the law, emergency responders now are generally considered obligated to render all emergency care necessary to every patient including those who have executed living wills even though this is often at odds with the wishes of the family and of the patient.

The Montana Emergency Medical Services Association, the Montana Private Ambulance Operators Association and my office are very much in favor of the <u>intent</u> of House Bill 422. In its current wording, we think it is still a bit confusing and would place the emergency care provider in an untenable situation. However, we have proposed some amendments which we feel will make it much more workable from a state-wide perspective and make it much better for all emergency care workers. These amendments are patterned after a similar program developed in the state of Maryland.

EXHIBIT 4
DATE 2-10-89
HB 422

Following is a summary of the amendments:

1. To clarify what actions the emergency care providers should take, we recommend that my office develop a standard, state-wide protocol. This would clearly state the actions the providers should take with a qualified patient, and would provide consistency across Montana. This would be developed in cooperation with medical associations, emergency medical associations, hospice organizations, home health organizations and others. This protocol would then be submitted to the Montana Board of Medical Examiners for their review and approval. I have visited with Doctor Malee of the Board and this approach is acceptable to them.

2. We would develop a standard, state-wide identification for qualified patients. A qualified patient in one who has declared a living will and who has been declared terminally ill by a physician. This form, which could also be reduced to a wallet card, would be signed by both the patient and the physician.

   If the emergency responders were shown this card or form at the scene, they would then follow the living will protocol. If they were not shown the card, they would render all possible emergency care. It would take the emergency responder out of the middle and be very clear cut for them.

   This would not preclude an individual community from doing other types of identification of these patients, but would still require the use of the standard form. Emergency care providers could still be provided liability protection for following the specific orders of a physician.

   Statewide standardization has a number of advantages including implementing training, allowing the same treatment if the qualified patients are outside of their community, and providing <u>one method</u> to be followed by all emergency responders in the state.

3. Liability protection would be extended to emergency care providers who follow the living will protocol. If, because of uncertainty at the scene or other problems, the emergency care provider did not follow the protocol and rendered emergency care, they would still be provided liability protection.

4. My office would develop a standardized training program for emergency medical services personnel in the use of the protocol. This could easily be incorporated into many existing training programs as well.

5. We would take the responsibility to notify Montana physicians and emergency care providers of the existence of the protocol and the standard identification.

With these amendments we feel that House Bill 422 will be of tremendous

EXHIBIT 4
DATE 2-10-89
HB 422

assistance in clarifying the role and responsibility of emergency medical services personnel. The responsibilities outlined would not have any additional financial impact on my office. It is important enough that it would fall within the scope of our existing training duties.

We understand there are other folks with suggested amendments to House Bill 422. While we have had some preliminary conversations with them, we would be pleased to sit down and see if we could work out some mutually agreeable amendments to the bill which you could consider in executive session.

Thank you for the opportunity to testify. I will be pleased to answer any questions.

EXHIBIT 5
DATE 2-10-89
HB 422

AMENDMENTS TO HOUSE BILL 422
RECOMMENDED BY
MONTANA EMERGENCY MEDICAL SERVICES ASSOCIATION
MONTANA PRIVATE AMBULANCE OPERATORS ASSOCIATION
MONTANA DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

Section 1.

Add the following definitions:

"Department" means the department of health and environmental sciences"

"Board" means the board of medical examiners, department of commerce"

"Living will protocol" means a method, developed by the department and approved by the board, of providing palliative care and withholding life-sustaining procedures by emergency medical service personnel to a qualified patient in accordance with 50-9-202. "

"Patient identification" means a state-wide, uniform form, developed by the department, for identification of a qualified patient which shall contain patient identifying information and which shall be signed by the attending physician and by the patient."

Amend the following definitions:

(3) "Emergency medical services personnel" means paid or volunteer firefighters, police,law enforcement paramedics, emergency medical technicians,first responders or other rescue-squadsemergency services personnel acting within the ordinary course of their profession."

(5) "Life-sustaining procedure" means any medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the dying process and-includes-first-response-procedures administered-by-emergency-medical-services-personnel.

New section.

When emergency medical services personnel are presented with a patient identification and there is reasonable assurance the person indicated on the patient identification is that patient, the emergency medical services personnel shall follow the living will protocol except as provided in 50-9-202 (1) . The presentation of a patient identification shall constitute evidence of a qualified patient whether or not the patient has actually revoked the declaration.

New section.

The department shall, in consultation with medical associations, emergency medical associations, home health organizations, hospice organizations and other emergency medical services providers:

(1) Develop a suggested living will protocol for presentation to the board;

EXHIBIT
DATE 2-10-89
HB 422

(2) Develop a patient identification;

(3) Develop a training program for emergency medical services personnel based on the living will protocol;

(4) Notify Montana physicians and emergency medical services personnel of the living will protocol and of the patient identification.

The board shall adopt a living will protocol and shall consider the recommendations of the department.

Amend Section 3 (c):

(c) emergency medical services personnel who cause or participate in the withholding or withdrawal of life-sustaining procedures under the direction of or with the authorization of a physician;**or who follow the living will protocol with patient who has a patient identification.**

Add another subsection to Section 3:

emergency services personnel who provide life-sustaining treatment to a qualified patient.

EXHIBIT 6
DATE 2-10-89
HB 422

HB 422

I believe that every person has the right to die with dignity. Being hooked up to machines is not dignified.

It is each persons right to choose whether he/she wishes to life support in a life threatening situation.

As a nurse, I know that once a person is hooked up to life sustaining machines it is nearly impossible to "pull its plug"

Connie Westby

EXHIBIT 7
DATE 2-10-89
HB 422

AARP

1988-1989
MONTANA STATE LEGISLATIVE COMMITTEE

[illegible]

VICE CHAIRMAN
Mr. Fred Farmer
1200 Knight
Helena, MT 59601
(406) 443-3600

SECRETARY
Mr. John C. Bowler
1400 West Story Street
Bozeman, MT 59715
(406) 587-7505

February 10, 1989

TO: House Judiciary

FROM: Owen Warren, American Association of Retired Persons

RE: In support of HB 422 - An act to amend the Living Will Act.

The Montana State Legislative Committee of AARP supports this bill for the following reason:

St. Peters emergency room personnel explained to me that people with a Living Will should give the patient's doctor one copy and one copy should remain with the patient at home. Often the patient would have a terminal disease, such as cancer, and would not want any life sustaining support. In this case if "Emergency medical services personnel" arive - the patient's copy of the Living Will can be shown to them and they would be covered by law to honor the patient's wishes and not be obligated to administer their usual life support services.

The American Association of Retired Persons strongly urge your passage of this bill.

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HOUSE BILL 422 DATE FEB. 10, 1989

SPONSOR REP. EUDAILY

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Drew Dawson	Dept. Health	X	
Owen Warren	AARP	X	
Chuck Stearns	City of Missoula	✓	
Tim Bergstrom	MT. State Firemens Association	X	
Earl J. Reilly			X
Connie Westby	Box 656 Arlee	X	
IRA R. Byock	341 University, Missoula	2	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on February 15, 1989, at 8:10 a.m.

ROLL CALL

Members Present: All members were present.

Members Excused: None.

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: None.

HEARING ON HOUSE BILL 558

Presentation and Opening Statement by Sponsor:

Rep. Tom Kilpatrick, House District 85 stated that this is a bill that will allow for cities and towns to declare punitive damages. One of the main factors is the net worth and the ability to pay along with a number of additional considerations. These include: nature and responsibility, extent, intent, profitability, amount of damages and net worth.

Testifying Proponents and Who They Represent:

None.

Proponent Testimony:

None.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: None.

CARRIED.

Rep. Hannah questioned if this solves the constitutional problem? What does this bill accomplish? Rep. Strizich addressed Rep. Hannah's concern by stating that this bill tries to allow some intervention where there currently is none. It comes down to a practical matter.

Recommendation and Vote: A DO PASS AS AMENDED motion was made by Rep. Strizich, seconded by Rep. Darko. Motion CARRIED with a Roll Call Vote of 10-ayes, 8-nays.

DISPOSITION OF HOUSE BILL 393

Motion: A DO PASS motion by Rep. Darko was made, seconded by Rep. Wyatt.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Daily moved amendments (EXHIBIT 10), motion seconded by Rep. Darko. Motion CARRIED.

Recommendation and Vote: Rep. Darko motioned DO PASS AS AMENDED, seconded by Rep. Boharski. A vote was taken and CARRIED unanimously that HB 393 DO PASS AS AMENDED.

DISPOSITION OF HOUSE BILL 422

Motion: Rep. Eudaily moved HB 422 DO PASS, motion seconded by Rep. Darko.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Eudaily moved the proposed amendments (EXHIBIT 11), motion seconded by Rep. Stickney. Motion CARRIED.

Recommendation and Vote: Rep. Eudaily motioned DO PASS AS AMENDED, motion seconded by Rep. Aafedt. A vote was taken and CARRIED unanimously.

DISPOSITION OF HOUSE BILL 493

Motion: A DO PASS motion was made by Rep. Strizich, motion seconded by Rep. Darko.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Strizich moved the proposed amendments (EXHIBIT 12), motion seconded by Rep. Brooke. Motion CARRIED.

Rep. Knapp commented that his objection to this bill is that it is a surtax bill and that they don't like to administer the

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date FEB. 15, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

CS-30

STANDING COMMITTEE REPORT

February 15, 1989

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 422 (first reading copy -- white), with statement of intent included, do pass as amended .

Signed: _____
Dave Brown, Chairman

And, that such amendments read:

1. Page 1, line 11.
Following: the title
Insert: "STATEMENT OF INTENT

A statement of intent is needed for this bill because [section 4] grants the department of health and environmental sciences authority to adopt rules to implement the Montana Living Will Act. It is intended that the rules address, among other things, living will protocols, reliable documentation of declarations, and training for emergency medical services personnel to inform them of the provisions of the act and implementing rules. In developing the rules, the department should seek the advice and aid of medical associations and organizations, including those relating to hospices, home health organizations, and emergency medical services."

2. Title, line 9.
Following: "PROVIDER;"
Insert: "GRANTING IMMUNITY TO EMERGENCY MEDICAL SERVICES PERSONNEL;"

3. Page 1, line 19.
Following: line 18
Insert: "(2) "Board" means the Montana state board of medical examiners."
Renumber: subsequent subsections

4. Page 1, line 21.
Following: line 20
Insert: "(4) "Department" means the department of health and environmental sciences."
Renumber: subsequent subsections

5. Page 1, line 22.
Strike: "police, paramedics"
Insert: "law enforcement officers, first responders"

6. Page 1, line 23.
Strike: "rescue squads"
Insert: "emergency services personnel"

7. Page 2, lines 7 and 8.
Strike: "and includes" on line 7 through "personnel" on line 8

8. Page 2, line 9.
Following: line 8
Insert: "(8) "Living will protocol" means a locally developed, community-wide method or a standardized, state-wide method developed by the department and approved by the board, of providing palliative care to and withholding life-sustaining procedures from a qualified patient under 50-9-202 by emergency medical service personnel."
Renumber: subsequent subsections

9. Page 2, line 15.
Following: line 14
Insert: "(11) "Reliable documentation" means a standardized, state-wide identification card or form or a necklace or bracelet of uniform design, adopted by a written, formal understanding of the local community emergency medical services agencies and licensed hospice and home health agencies, that signifies and certifies that a valid and current declaration is on file and that the individual is a qualified patient."
Renumber: subsequent subsection

10. Page 3, line 4.
Following: "communicated."
Insert: "A health care provider or emergency medical services personnel witnessing a revocation may act upon the revocation and must communicate the revocation to the attending physician at the earliest opportunity."

11. Page 3, line 5.
Following: "physician"
Insert: ", emergency medical services personnel,"

12. Page 4, line 2.
Following: "physician"
Insert: "or who on receipt of reliable documentation follow a living will protocol"

13. Page 4, line 3.
Following: line 2
Insert: "(d) emergency medical services personnel who after a good faith attempt to do so are unable to find reliable documentation of a declaration and proceed to provide life-sustaining treatment to a qualified patient; and"
Renumber: subsequent subsection

14. Page 4, line 8.
Following: line 7
Insert: "NEW SECTION. Section 4. Authority to adopt rules. The department may adopt rules to implement this chapter.

NEW SECTION. Section 5. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 50, chapter 9, and the provisions of Title 50, chapter 9, apply to [section 4]."
Renumber: subsequent section

EXHIBIT 11
DATE 2-15-89
HB 422

Amendments to House Bill No. 422
First Reading Copy

Requested by Rep. Eudaily
For the Committee on the Judiciary

Prepared by John MacMaster
February 13, 1989

1. Page 1, line 11.
Following: the title
Insert: "STATEMENT OF INTENT

A Statement of Intent is needed for this bill because section 4 grants the department of health and environmental sciences authority to adopt rules to implement the Montana Living Will Act. It is intended that the rules address, among other things, living will protocols, reliable documentation of declarations, and training for emergency medical services personnel to inform them of the provisions of the act and implementing rules. In developing the rules the department should seek the advice and aid of medical associations and organizations, including those relating to hospices, home health, and emergency medical services."

2. Title, line 9.
Following: "PROVIDER;"
Insert: "GRANTING IMMUNITY TO EMERGENCY MEDICAL SERVICES PERSONNEL;"

3. Page 1, line 19.
Following: line 18
Insert: "(2) "Board" means the Montana state board of medical examiners."
Renumber: subsequent subsections

4. Page 1, line 21.
Following: line 20
Insert: "(3) "Department" means the department of health and environmental sciences."
Renumber: subsequent subsections

5. Page 1, line 22.
Strike: "police, paramedics"
Insert: "law enforcement officers, first responders"

6. Page 1, line 23.
Strike: "rescue squads"
Insert: "emergency services personnel"

7. Page 2, lines 7 and 8.
Strike: "and includes" on line 7 through "personnel" on line 8

EXHIBIT 11
DATE 2-15-89
HB 422

8. Page 2, line 9.
Following: line 8
Insert: "(8) "Living will protocol" means a locally developed, community-wide method, or a standardized state-wide method developed by the department and approved by the board, of providing palliative care to and withholding life-sustaining procedures from a qualified patient under 50-9-402 by emergency medical service personnel."
Renumber: subsequent subsections

9. Page 2, line 15.
Following: line 14
Insert: "(11) "Reliable documentation" means a standardized, state-wide identification card or form, or a necklace or bracelet of uniform design, adopted by a written, formal understanding of the local community emergency medical services agencies and licensed hospice and home health agencies, that signifies and certifies that a valid and current declaration is on file and that the individual is a qualified patient."
Renumber: subsequent subsection

10. Page 3, line 4.
Following: "communicated."
Insert: "A health care provider or emergency medical services personnel witnessing a revocation may act upon the revocation and must communicate the revocation to the attending physician at the earliest opportunity."

11. Page 3, line 5.
Following: "physician"
Insert: ", emergency medical services personnel,"

12. Page 4, line 2.
Following: "physician"
Insert: "or who on receipt of reliable documentation follow a living will protocol"

13. Page 4, line 3.
Following: line 2
Insert: "(d) emergency medical services personnel who after a good faith attempt to do so are unable to find reliable documentation of a declaration and proceed to provide life-sustaining treatment to a qualified patient; and"
Renumber: subsequent subsection

14. Page 4, line 8.
Following: line 7
Insert: "NEW SECTION. Section 4. Authority to adopt rules. The department may adopt rules to implement this chapter.

NEW SECTION. Section 5. Codification instruction. [Section 4 of this act] is intended to be codified to Title 50, chapter 9, and the provisions of Title 50, chapter 9, apply to [section 4]."

EXHIBIT 11
DATE 2-15-89
HB 422

Renumber: subsequent section

CHAIRMAN--BRUCE CRIPPEN
SECRETARY-ROSEMARY JACOBY
NORMAL SCHEDULE==> SITE: ROOM 325

COMMITTEE--(S) JUDICIARY
DAYS: M,T,W,T,F TIME: 10:00 A.M.

OFFICE--ROOM 412

NOTE: BILL WILL BE LISTED TWICE IF REREFERRED BACK TO THE SAME COMMITTEE

BILL	REFER DATE	LATEST DATE/ACTION ON BILL	
		SPONSOR: ADDY, KELLY	TITLE-CLARIFY LAW CONCERNING ACCESS TO JUSTICE DEPARTMENT REPORTS ON CAR ACCIDENTS
HB 310	02/18	03/23--(H) CHAPTER NUMBER	EFFECTIVE DATE: 07/01/89
		SPONSOR: SCHYE, TED	TITLE-REVISE YOUTH COURT ACT PETITION FILING TIME AND HEARING PROVISIONS
HB 312	02/06	03/24--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: CONNELLY, MARY ELLEN	TITLE-AMENDING CUSTODY MODIFICATION STATUTE TO DEFINE PRIOR "CUSTODY DECREE"
HB 313	02/17	04/04--(H) CHAPTER NUMBER	EFFECTIVE DATE: 04/04/89
		SPONSOR: GRADY, ED	TITLE-REVISE SKIER RESPONSIBILITY LAW TO ADDRESS SUPREME COURT DECISION
HB 326	02/08	03/27--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: RICE, JIM	TITLE-EXEMPT PARALEGALS, LAW ASSISTANTS AND STUDENTS FROM PRIVATE INVESTIGATOR LAW
HB 349	02/15	04/11--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: STRIZICH, BILL	TITLE-DISPOSITION OF PROPERTY USED TO VIOLATE DRUG LAWS
HB 350	02/15	04/11--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: STRIZICH, BILL	TITLE-CONVICTED PERSON TO PAY COST OF SUPERVISING HIS PAYMENT OF RESTITUTION
HB 351	02/15	03/27--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: STRIZICH, BILL	TITLE-CRIMINAL OFFENSE TO POSSESS SAWED-OFF RIFLE OR SHOTGUN
HB 368	02/09	03/27--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: COCCHIARELLA, VICKI	TITLE-NEGLIGENT VEHICULAR ASSAULT--LICENSE REVOCATION AND 12 CONVICTION POINTS
HB 386	02/13	04/24--TABLED IN COMMITTEE	
		SPONSOR: KNAPP, ROGER	TITLE-DIVIDING TAXES ON PERSONAL PROPERTY SOLD IN BANKRUPTCY
HB 393	02/28	04/03--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: DARKO, PAULA	TITLE-UNLAWFUL POSSESSION--INCLUDE CONSUMPTION--COMMUNITY SERVICE
HB 401	02/15	04/21--(H) -	FILED WITH SECRETARY OF STATE
		SPONSOR: BROWN, DAVE	TITLE-PERMIT PROBATION AND PAROLE OFFICERS TO CARRY FIREARMS
HB 409	02/09	03/23--(H) CHAPTER NUMBER	EFFECTIVE DATE: 03/23/89
		SPONSOR: GOOD, SUSAN	TITLE-CLARIFY ATTORNEY CLIENT PRIVILEGE
HB 422	02/28	04/08--(H) CHAPTER NUMBER	EFFECTIVE DATE: 04/08/89
		SPONSOR: EUDAILY, RALPH	TITLE-AMEND LIVING WILL ACT AS TO PEOPLE WHO MAY WITHHOLD LIFESUSTAINING PROCEDURE
HB 425	02/18	04/08--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: VINCENT, JOHN	TITLE-GENERALLY STIFFEN DUI PENALTIES
HB 448	02/09	03/29--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: MENAHAN, RED	TITLE-AUTHORIZE POSSESSION OF 25-YEAR OLD SLOT MACHINES
HB 454	02/06	03/23--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: CONNELLY, MARY ELLEN	TITLE-PROHIBIT APPEAL OF GUILTY PLEA TO DISTRICT COURT
HB 459	02/15	03/14--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89
		SPONSOR: BROWN, JAN	TITLE-ALLOW JURIES OF LESS THAN 12 IN FELONY ACTIONS IF PARTIES AGREE
HB 471	02/15	03/30--(H) CHAPTER NUMBER	EFFECTIVE DATE: 03/30/89
		SPONSOR: GLASER, WILLIAM	TITLE-WATER DISTRICT MAY GET PREDECESSOR WATER ASSN PROPERTY BY EMINENT DOMAIN

HOUSE BILL NO. 422

INTRODUCED BY EUDAILY

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LIVING WILL ACT TO ALLOW A DECLARANT TO DIRECT EMERGENCY MEDICAL SERVICES PERSONNEL TO WITHHOLD LIFE-SUSTAINING PROCEDURES; TO LIMIT THE EFFECT OF A REVOCATION OF A DECLARATION COMMUNICATED TO SOMEONE OTHER THAN A PHYSICIAN OR OTHER HEALTH CARE PROVIDER; GRANTING IMMUNITY TO EMERGENCY MEDICAL SERVICES PERSONNEL; AMENDING SECTIONS 50-9-102, 50-9-104, AND 50-9-204, MCA; AND PROVIDING AN APPLICABILITY DATE."

STATEMENT OF INTENT

A statement of intent is needed for this bill because [section 4] grants the department of health and environmental sciences authority to adopt rules to implement the Montana Living Will Act. It is intended that the rules address, among other things, living will protocols, reliable documentation of declarations, and training for emergency medical services personnel to inform them of the provisions of the act and implementing rules. In developing the rules, the department should seek the advice and aid of medical associations and organizations, including those relating to hospices, home health organizations, and emergency medical services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-9-102, MCA, is amended to read:

"50-9-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Attending physician" means the physician selected by or assigned to the patient, who has primary responsibility for the treatment and care of the patient.

(2) "BOARD" MEANS THE MONTANA STATE BOARD OF MEDICAL EXAMINERS.

~~(2)~~(3) "Declaration" means a document executed in accordance with the requirements of 50-9-103.

(4) "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES.

~~(3)~~(5) "Emergency medical services personnel" means paid or volunteer firefighters, ~~police,--paramedics~~ LAW ENFORCEMENT OFFICERS, FIRST RESPONDERS, emergency medical technicians, or other ~~rescue--squads~~ EMERGENCY SERVICES PERSONNEL acting within the ordinary course of their profession.

~~(3)~~~~(4)~~(6) "Health care provider" means a person who is licensed or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession.

~~(4)~~~~(5)~~(7) "Life-sustaining procedure" means any

THIRD READING

33

medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the dying process ~~and includes first response procedures--administered by emergency medical services personnel~~.

(8) "LIVING WILL PROTOCOL" MEANS A LOCALLY DEVELOPED, COMMUNITY-WIDE METHOD OR A STANDARDIZED, STATE-WIDE METHOD DEVELOPED BY THE DEPARTMENT AND APPROVED BY THE BOARD, OF PROVIDING PALLIATIVE CARE TO AND WITHHOLDING LIFE-SUSTAINING PROCEDURES FROM A QUALIFIED PATIENT UNDER 50-9-202 BY EMERGENCY MEDICAL SERVICE PERSONNEL.

~~(5)~~(6)(9) "Physician" means a person licensed under Title 37, chapter 3, to practice medicine in this state.

~~(6)~~(7)(10) "Qualified patient" means a patient who has executed a declaration in accordance with this chapter and who has been determined by the attending physician to be in a terminal condition.

(11) "RELIABLE DOCUMENTATION" MEANS A STANDARDIZED, STATE-WIDE IDENTIFICATION CARD OR FORM OR A NECKLACE OR BRACELET OF UNIFORM DESIGN, ADOPTED BY A WRITTEN, FORMAL UNDERSTANDING OF THE LOCAL COMMUNITY EMERGENCY MEDICAL SERVICES AGENCIES AND LICENSED HOSPICE AND HOME HEALTH AGENCIES, THAT SIGNIFIES AND CERTIFIES THAT A VALID AND CURRENT DECLARATION IS ON FILE AND THAT THE INDIVIDUAL IS A QUALIFIED PATIENT.

~~(7)~~(8)(12) "Terminal condition" means an incurable or

irreversible condition that, without the administration of life-sustaining procedures, will, in the opinion of the attending physician, result in death within a relatively short time."

Section 2. Section 50-9-104, MCA, is amended to read:

"50-9-104. Revocation of declaration. (1) A declaration may be revoked at any time and in any manner by which the declarant is able to communicate his intent to revoke, without regard to mental or physical condition. A revocation is effective only as to the attending physician or any health care provider acting under the guidance of that physician upon communication to the physician or health care provider by the declarant or by another to whom the revocation was communicated. A HEALTH CARE PROVIDER OR EMERGENCY MEDICAL SERVICES PERSONNEL WITNESSING A REVOCATION MAY ACT UPON THE REVOCATION AND MUST COMMUNICATE THE REVOCATION TO THE ATTENDING PHYSICIAN AT THE EARLIEST OPPORTUNITY. A revocation communicated to a person other than the attending physician, EMERGENCY MEDICAL SERVICES PERSONNEL, or a health care provider is not effective unless the attending physician is informed of it before the qualified patient is in need of life-sustaining procedures.

(2) The attending physician or health care provider shall make the revocation a part of the declarant's medical record."

Section 3. Section 50-9-204, MCA, is amended to read:

"**50-9-204. Immunities.** (1) In the absence of actual notice of the revocation of a declaration, the following, while acting in accordance with the requirements of this chapter, are not subject to civil or criminal liability or guilty of unprofessional conduct:

(a) a physician who causes the withholding or withdrawal of life-sustaining procedures from a qualified patient;

(b) a person who participates in the withholding or withdrawal of life-sustaining procedures under the direction or with the authorization of a physician;

(c) emergency medical services personnel who cause or participate in the withholding or withdrawal of life-sustaining procedures under the direction of or with the authorization of a physician OR WHO ON RECEIPT OF RELIABLE DOCUMENTATION FOLLOW A LIVING WILL PROTOCOL;

(D) EMERGENCY MEDICAL SERVICES PERSONNEL WHO AFTER A GOOD FAITH ATTEMPT TO DO SO ARE UNABLE TO FIND RELIABLE DOCUMENTATION OF A DECLARATION AND PROCEED TO PROVIDE LIFE-SUSTAINING TREATMENT TO A QUALIFIED PATIENT; AND

~~(c)~~~~(d)~~(E) ~~the~~ a health care facility in which ~~the~~ withholding or withdrawal occurs.

(2) A physician is not subject to civil or criminal liability for actions under this chapter that are in accord

with reasonable medical standards."

NEW SECTION. **SECTION 4.** AUTHORITY TO ADOPT RULES. THE DEPARTMENT MAY ADOPT RULES TO IMPLEMENT THIS CHAPTER.

NEW SECTION. **SECTION 5.** CODIFICATION INSTRUCTION. [SECTION 4] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 50, CHAPTER 9, AND THE PROVISIONS OF TITLE 50, CHAPTER 9, APPLY TO [SECTION 4].

NEW SECTION. **Section 6. Applicability.** [This act] applies to declarations made after [the effective date of this act].

-End-

35

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By V. Chairman Al Bishop for Chairman Crippen who was temporarily absent, on March 14, 1989, at 10:00 a.m. in Room 413.

ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al Bishop, Bob Brown, Tom Beck, John Harp, Mike Halligan, Loren Jenkins, Joe Mazurek, R. J. Pinsoneault and Bill Yellowtail

Members Excused: None

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee Secretary Rosemary Jacoby

Announcements/Discussion: There were none.

HEARING ON HOUSE BILL 422

Presentation and Opening Statement by Sponsor:
Representative Ralph Eudaily of Missoula, District 60, opened the hearing. He said the bill was to amend the living will regarding the withholding of life-sustaining procedures.

List of Testifying Proponents and What Group they Represent:

Drew Dawson, Department of Health and Environmental Sciences, Chief of the Emergency Medical Services Bureau
Owen, Warren, American Association of Retired Persons
Jim Nugent, Missoula City Attorney

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Drew Dawson appeared with written testimony (Exhibit 1)

Owen Warren presented written testimony to the committee (Exhibit 2).

Jim Nugent read written testimony (Exhibit 3). He also suggested an amendment to the bill explained in his written testimony.

Questions From Committee Members: Senator Halligan asked why have a declaration after the effective date. Jim Nugent said he wasn't sure.

Senator Jenkins asked if there had been any problems with the law presently in statute. Drew Dawson said the problem has been that the EMTs have to provide life-sustaining care and this is at odds with the individual involved or with the family at times. If a terminally-ill patient is under cardiac arrest, they are presently required to begin care even if the family says there is a living will on file. He didn't know of a legal problem that has occurred, but said there had been problems with family members.

Senator Jenkins asked about the protocol, local and statewide. Mr. Dawson said the EMTs and the Hospice programs would provide the protocol at the local and state levels. The protocol is the "hands on" care given to the patient, he said. At present, there is no statewide protocol.

Senator Beck asked if Drew Dawson had any problem with the amendments proposed by Jim Nugent and he said no.

Senator Pinsoneault said the committee was going on the assumption that all living wills were the same which might not be true. There is a basic wording, but if anyone deviates from the formula provided in the living will act, there could there be a problem, he said. Drew Dawson said he thought the living will was fairly standard. Jim Nugent said the living wills were to be filed with the ambulance services, fire department and law enforcement agencies. The identification should also be available a the patient's home, he said. Currently, physicians and health care

facilities have the immunity if they honor the living will, but EMTs or law enforcement do not have the immunity. If the patient requests the treatment even with a living will, there is a dilemma, he said.

Senator Jenkins asked about a "qualified" patient. Who would have the responsibility of determining whether or not the patient is terminal under the absence of the physician, he asked. Jim Nugent said that had not been a problem with that, but had been in other areas, such as giving treatment when the family's did not want it or in cases where the patient asked for treatment even with the living will.

Closing by Sponsor: Representative Eudaily closed the hearing.

DISPOSITION OF HOUSE BILL 422

Discussion: Senator Yellowtail questioned p. 4, line 16 regarding "may". Senator Halligan said it may not be known if the person is "qualified." Valencia Lane said a patient saying: "I don't want to die, help me" would constitute a revocation of the living will. Senator Mazurek thought it would be better to err in saving a life, than in letting someone die. Valencia said the EMTs want to avoid liability in the bill.

Senator Yellowtail said if there were if verbal revocation of any kind, the EMTs should act. Senator Crippen wondered if a mumbling would be considered a revocation. Senator Beck wondered if the EMTs might abuse the word "may". Senator Mazurek commented that if an EMT "witnesses a revocation", they are required to act. He said the word "may" made the bill less specific and questionable.

Amendments and Votes: Senator Beck MOVED the amendments proposed by Jim Nugent. (Exhibit 3) The MOTION CARRIED UNANIMOUSLY

Senator Halligan MOVED to strike the applicability date and insert a New Section 6 providing for an immediate effective date. The MOTION CARRIED UNANIMOUSLY.

Senator Yellowtail MOVED to amend the bill on p. 4, line 16 striking "may" and inserting "shall". The MOTION CARRIED by a vote of 7 to 3, with Senators Beck, Jenkins and Pinsoneault voting NO.

Recommendation and Vote: Senator Mazurek MOVED that House Bill 422 BE CONCURRED IN AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 448

Presentation and Opening Statement by Sponsor:
Representative Bill Menahan of Anaconda, District 60, opened the hearing. The purpose of the bill was to authorize possession of 25-year old slot machines, to provide that they be considered antiques. He said that a proprietor of the Cal Neva Club had told him that the oldest slot machines used there were about 15 years old, though most were newer. Therefore, he felt that 25-year-old machines should qualify as antiques.

List of Testifying Proponents and What Group they Represent:

Bernie Dempsey, Owner of a second-hand store in Polson
Bob Gilbert, for himself, Helena

List of Testifying Opponents and What Group They Represent:

None

Testimony: Bernie Dempsey testified in favor of the bill, presenting written testimony to the committee (Exhibit 4).

Bob Gilbert, said he was a collector of slot machines. He said it had been difficult to get the antique collection of slot machines into statute, but said then-Senator Turnage had helped do it in 1985. He said the collection of the machines had not been abused and he urged passage of the bill.

Questions From Committee Members: None

Closing by Sponsor: Representative Menahan closed. He called the attention of the committee to the wording that "antique machines may not be operated for any charitable or commercial purposes."

NOTE: Exhibit 5 was left with the committee for the record, but the person submitting the letter did not testify.

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 3-14-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 3-14-89 Tuesday Bill No. 422 Time

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK		✓
SEN. BROWN	✓	
SEN. HALLIGAN	✓	
SEN. HARP	✓	
SEN. JENKINS		✓
SEN. MAZUREK	✓	
SEN PINSONEAULT		✓
SEN.YELLOWTAIL	✓	
SEN. CRIPPEN	✓	

7 to 3

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Senator Yellowtail Amend "may" "shall"

SF-3 (Rev. 1987)

SENATE STANDING COMMITTEE REPORT

March 15, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 422 (third reading copy -- blue), respectfully report that HB 422 be amended and as so amended be concurred in:

Sponsor: Eudaily (Van Valkenburg)

1. Title, line 11.
Strike: "APPLICABILITY"
Insert: "IMMEDIATE EFFECTIVE"

2. Page 4, line 16.
Strike: "MAY"
Insert: "shall"
Strike: "MUST"
Insert: "shall"

3. Page 5, lines 18 through 20.
Following: "WHO" on line 18
Strike: remainder of line 18 through "AND" on line 20

4. Page 5, line 21.
Following: "PATIENT"
Insert: "pursuant to a revocation communicated to them"

5. Page 6, lines 8 through 10.
Strike: section 6 in its entirety
Insert: "NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval."

AND AS AMENDED BE CONCURRED IN

Signed: Bruce D. Crippen, Chairman

SENATE

SCRHB422.315

HB 422

EX 1.

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 3-14-89
BILL NO HB 422

HOUSE BILL 422

TESTIMONY OF DREW DAWSON, CHIEF
EMERGENCY MEDICAL SERVICES BUREAU
MONTANA DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

Mr. Chairman and members of the committee. I am Drew Dawson, Chief of the Emergency Medical Services Bureau in the Department of Health and Environmental Sciences. My office is responsible for the training and certification of emergency medical services personnel and for the licensing of ambulance services. I am pleased to testify as a proponent of House Bill 422.

At the request of Representative Eudaily, I solicited, by a conference call, the comments and recommendations of various emergency medical services personnel throughout Montana. This included the Montana Emergency Medical Services Association (representing Montana EMTs) and the Montana Private Ambulance Operators Association (representing Montana's private ambulance services).

Everyone was in agreement that some modifications to the Living Will Act are necessary to clarify the role of the pre-hospital emergency medical care provider. In the current law, it is not clear that the Living Will Act applies to situations occurring outside of the hospital.

Emergency medical care personnel must, in an instant's time, make a decision about whether to begin Cardiopulmonary Resuscitation for a person in cardiac arrest, or about the type and level of care administered to a terminally ill patient. They simply don't have the ability to contact the person's personal physician and are often faced with conflicting information from family members. The situation is often emotionally charged; it is very difficult for the emergency care provider to know what to do. In an emergency situation, it is nearly impossible for them to review a legal document, such as a living will, or to sort through several different types of documentation. Just because a patient has executed a living will does not necessarily mean he is a qualified patient (i.e. terminally ill). I can declare a living will right now, but not be a qualified patient unless I were to become terminally ill. I certainly would want all possible emergency care administered to me now. Evidence of a living will is not sufficient for emergency care providers; they must <u>also</u> have evidence that they are dealing with a qualified patient.

Because of the uncertainty in the law, emergency responders now are generally considered obligated to render all emergency care necessary to every patient including those who have executed living wills and who may be qualified patients even though this is often at odds with the wishes of the family and of the patient.

The Montana Emergency Medical Services Association, the Montana Private Ambulance Operators Association and my office are very much in favor of the House Bill 422. The bill would work as follows:

1. To clarify what actions the emergency care providers should take, we my office develop a standard, state-wide protocol. This would clearly state the actions the providers should take with a qualified patient, and

would provide consistency across Montana. This would be developed in cooperation with medical associations, emergency medical associations, hospice organizations, home health organizations and others. This protocol would then be submitted to the Montana Board of Medical Examiners for their review and approval. I have visited with Doctor Malee of the Board and this approach is acceptable to them.

To provide additional flexibility, a local community could also adopt a community-wide protocol.

2. We will develop a standard, state-wide identification for qualified patients. A qualified patient in one who has declared a living will and who has been declared terminally ill by a physician. This form, which could also be reduced to a wallet card, would be signed by both the patient and the physician. An individual community, through agreement of the emergency medical services organizations, hospice and home health organizations, could develop special forms of identification for their area.

   If the emergency responders were shown this card or form at the scene, they would then follow the living will protocol. If they were not shown the card, they would render all possible emergency care. It would take the emergency responder out of the middle and be very clear cut for them.

   Emergency care providers are provided liability protection for following the specific orders of a physician or for following the living will protocol when provided with appropriate documentation.

3. My office would develop a standardized training program for emergency medical services personnel in the use of the protocol. This could easily be incorporated into many existing training programs as well.

We feel that House Bill 422 will be of tremendous assistance in clarifying the role and responsibility of emergency medical services personnel. The responsibilities outlined would not have any additional financial impact on my office. It is important enough that it would fall within the scope of our existing training duties.

Thank you for the opportunity to testify. I will be pleased to answer any questions.

EX 2.

EXHIBIT NO. 2
DATE 3-14-89
BILL NO. HB 422

AARP

1988-1989
MONTANA STATE LEGISLATIVE COMMITTEE

CHAIRMAN
Mrs. Molly L. Munro
4022 6th Avenue South
Great Falls, MT 59405
(406) 727-5604

VICE CHAIRMAN
Mr. Fred Patten
1700 Knight
Helena, MT 59601
(406) 443-3696

SECRETARY
Mr. John C. Bower
1405 West Story Street
Bozeman, MT 59715
(406) 587-7535

March 14, 1989

TO: Senate Judiciary

FROM: Owen Warren, American Association of Retired Persons

RE: In Support of HB 422 - An Act to amend the Living Will Act to allow a "Declarant" to Direct Emergency Medical Services Personnel to Withold Life-Sustaining Procedures

The Montana State Legislative Committee of AARP supports this bill for the following reasons:

The bill would initiate a process of reliable documentation by means of a card, necklace or bracelet, of uniform design, to be quickly identified, that would signify that a certified and valid current declaration is on file and that the individual is a qualified patient.

Often the patient may have a terminal illness, such as cancer, and would not want any life sustaining support. In this case when "Emergency medical services personnel" arrive, the patient's I.D. would allow them by law to honor the patient's wishes and not be obligated to administer their usual life support services.

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 3-14-89
BILL NO. HB 422

MISSOULA

OFFICE OF THE CITY ATTORNEY

201 W. SPRUCE • MISSOULA, MT 59802-4297 • (406) 721-4700

March 13, 1989 89-118

Senate Judiciary Committee
Montana State Capitol
Capitol Station
Helena, Montana 59620

Missoula County Senators
Montana State Senate
Capitol Station
Helena, Montana 59620

RE: PROPOSED REVISIONS TO MONTANA LIVING WILL ACT, SPECIFICALLY REVISIONS TO SECTION 50-9-104 AND 50-9-204 M. C. A.

Honorable State Senators:

The purpose of this letter of to generally urge your support for HB-422 but to also request amendments to Section 3, page 5, lines 18-21 of HB-422.

House Bill 422 amending the Montana Living Will Act is a proposal that is important for Emergency Medical Services personnel throughout the state. HB-422 is intended to provide (1) important clarifying provisions pertaining to a victim's revocation of a prior declaration to not receive administration of life-sustaining procedures as well as (2) include emergency medical service personnel within the current statutory immunities provision in Section 50-9-204, M. C. A.

However, an amendment to the original proposal inserted by the House in Section 3, page 5, lines 18-21 of HB-422 causes city officials a great deal of concern since it conflicts with the emergency medical service providers purpose to provide immediate emergency medical service. Therefore, I would like to take this opportunity to respectfully request revisions to the current proposed provisions to the Montana Living Will Act, in Section 3, page 5, lines 18-21.

Potential civil liability exposure to city emergency response personnel as well as the City of Missoula is the basis for the City of Missoula's two concerns which are as follows:

(1) Section 3 pertaining to "Immunities" fails to cross reference to conduct authorized when a revocation is communicated to emergency medical service personnel pursuant to Section 2, page 4, lines 14-18 of HB-422 where emergency medical services personnel witnessing a revocation may act upon the revocation. Section 3, page 5, lines 18-21 of HB-422 should include this emergency medical service personnel conduct within the statutory immunity as well.

The City of Missoula would request that the words "after a good faith attempt to do so are unable to find reliable documenation of a declaration and "be deleted in Section 3, pages 5, lines 18-20 and at the end of line 21 insert the words "pursuant to a revocation communicated to them" (2) The language identified above for requested deletion in Section 3, page 5, lines 18-21, as currently proposed, unreasonably and unduly delays the provision

4/c

SENATE JUDICIARY
EXHIBIT NO.
DATE
BILL NO.

of emergency medical services while emergency services personnel attempt to find reliable documentation. The current language grants immunity to emergency medical services personnel "who after a good faith attempt to do so are unable to find reliable documentation of a declaration and proceed to provide life-sustaining treatment to a qualified patient." The underlined language is what the City of Missoula requests be deleted.

A time delay may mean the difference between life or death or continued life with brain damage as a result of a lack of oxygen. This proposed requirement for emergency medical service personnel to make a good faith attempt to find reliable documentation of a declaration that life-sustaining procedures be withheld or withdrawn and if unable to locate such declaration then proceed to provide emergency medical services directly conflicts with the purpose and function of dispatching emergency medical personnel to an emergency scene for the purpose of providing immediate emergency medical services.

Emergency medical service personnel arrive at an emergency to provide immediate emergency medical service not to conduct good faith attempts to find a declaration and if unable to find such a declaration then proceed to provide emergency medical service. Further, what would sufficiently constitute "good faith attempt"? To what extent must a "good faith attempt" be made? Will the meaning of "good faith attempt" have to be litigated on a case by case basis in order to determine if a specific set of facts sufficiently constituted "good faith attempt"?

The phrase "good faith attempt" is not only vague and ambiguous, it is unreasonably and unduly restrictive on the emergency services medical personnel who have been dispatched to an "emergency situation" for the purposes of providing imemdiate emergency medical service.

Therefore, the City of Missoula urges your consideration of the two amendments requested herein and then generally urges your support for HB-422 as proposed for amendment. Thank you for your consideration of these matters.

Yours truly,

Jim Nugent

Jim Nugent
City Attorney
JN:es
cc: Rep. Ralph Eudaily; Dr. Ira Byock, Alec Hansen, Exec. Dir. Mt. League of Cities & Towns; Don Millhouse, Police Chief; Jim Oberhofer, Asst. Police Chief; Chuck Gibson, Fire Chief; Marshall Kyle, Asst. Fire Chief; Stan Kaleczyc

DATE 3-14-89

COMMITTEE ON Senate Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppose
Jim Melstad	Eastgate Village Water Users	HB471	X	
Nick V. Closs	Forest Park W. User. Assc.	HB471	X	
Bruce Restad	County Water Dist/Bgs Heights Montana Rural Water	HB471	X	
Jerry McGrail	Lockwood Water Users Assoc.	HB471	X	
Jerry Wadsworth	MT Rural Water Systems	HB471	X	
Gina Wadsworth	Windy Acres WUA	HB471	X	
Jim Nugent	Missoula City of	HB422	X with amendment	
Harold M. Smith	—	HB471	X	
Bernard Dempsey	Polson, Mont	HB448	X	
Owen Hazen	AARP	422	X	

HOUSE BILL NO. 422

INTRODUCED BY EUDAILY

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE LIVING WILL ACT TO ALLOW A DECLARANT TO DIRECT EMERGENCY MEDICAL SERVICES PERSONNEL TO WITHHOLD LIFE-SUSTAINING PROCEDURES; TO LIMIT THE EFFECT OF A REVOCATION OF A DECLARATION COMMUNICATED TO SOMEONE OTHER THAN A PHYSICIAN OR OTHER HEALTH CARE PROVIDER; GRANTING IMMUNITY TO EMERGENCY MEDICAL SERVICES PERSONNEL; AMENDING SECTIONS 50-9-102, 50-9-104, AND 50-9-204, MCA; AND PROVIDING AN ~~APPLICABILITY~~ IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is needed for this bill because [section 4] grants the department of health and environmental sciences authority to adopt rules to implement the Montana Living Will Act. It is intended that the rules address, among other things, living will protocols, reliable documentation of declarations, and training for emergency medical services personnel to inform them of the provisions of the act and implementing rules. In developing the rules, the department should seek the advice and aid of medical associations and organizations, including those relating to hospices, home health organizations, and emergency medical services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-9-102, MCA, is amended to read:

"**50-9-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Attending physician" means the physician selected by or assigned to the patient, who has primary responsibility for the treatment and care of the patient.

(2) "BOARD" MEANS THE MONTANA STATE BOARD OF MEDICAL EXAMINERS.

~~(2)~~(3) "Declaration" means a document executed in accordance with the requirements of 50-9-103.

(4) "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES.

~~(3)~~(5) "Emergency medical services personnel" means paid or volunteer firefighters, ~~police,--paramedics~~ LAW ENFORCEMENT OFFICERS, FIRST RESPONDERS, emergency medical technicians, or other ~~rescue--squads~~ EMERGENCY SERVICES PERSONNEL acting within the ordinary course of their profession.

~~(3)~~~~(4)~~(6) "Health care provider" means a person who is licensed or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession.

~~(4)~~(5)(7) "Life-sustaining procedure" means any medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the dying process ~~and includes first response procedures administered by emergency medical services personnel~~.

(8) "LIVING WILL PROTOCOL" MEANS A LOCALLY DEVELOPED, COMMUNITY-WIDE METHOD OR A STANDARDIZED, STATE-WIDE METHOD DEVELOPED BY THE DEPARTMENT AND APPROVED BY THE BOARD, OF PROVIDING PALLIATIVE CARE TO AND WITHHOLDING LIFE-SUSTAINING PROCEDURES FROM A QUALIFIED PATIENT UNDER 50-9-202 BY EMERGENCY MEDICAL SERVICE PERSONNEL.

~~(5)~~(6)(9) "Physician" means a person licensed under Title 37, chapter 3, to practice medicine in this state.

~~(6)~~(7)(10) "Qualified patient" means a patient who has executed a declaration in accordance with this chapter and who has been determined by the attending physician to be in a terminal condition.

(11) "RELIABLE DOCUMENTATION" MEANS A STANDARDIZED, STATE-WIDE IDENTIFICATION CARD OR FORM OR A NECKLACE OR BRACELET OF UNIFORM DESIGN, ADOPTED BY A WRITTEN, FORMAL UNDERSTANDING OF THE LOCAL COMMUNITY EMERGENCY MEDICAL SERVICES AGENCIES AND LICENSED HOSPICE AND HOME HEALTH AGENCIES, THAT SIGNIFIES AND CERTIFIES THAT A VALID AND CURRENT DECLARATION IS ON FILE AND THAT THE INDIVIDUAL IS A QUALIFIED PATIENT.

~~(7)~~(8)(12) "Terminal condition" means an incurable or irreversible condition that, without the administration of life-sustaining procedures, will, in the opinion of the attending physician, result in death within a relatively short time."

Section 2. Section 50-9-104, MCA, is amended to read:

"**50-9-104. Revocation of declaration.** (1) A declaration may be revoked at any time and in any manner by which the declarant is able to communicate his intent to revoke, without regard to mental or physical condition. A revocation is effective only as to the attending physician or any health care provider acting under the guidance of that physician upon communication to the physician or health care provider by the declarant or by another to whom the revocation was communicated. A HEALTH CARE PROVIDER OR EMERGENCY MEDICAL SERVICES PERSONNEL WITNESSING A REVOCATION ~~MAY~~ SHALL ACT UPON THE REVOCATION AND ~~MUST~~ SHALL COMMUNICATE THE REVOCATION TO THE ATTENDING PHYSICIAN AT THE EARLIEST OPPORTUNITY. A revocation communicated to a person other than the attending physician, EMERGENCY MEDICAL SERVICES PERSONNEL, or a health care provider is not effective unless the attending physician is informed of it before the qualified patient is in need of life-sustaining procedures.

(2) The attending physician or health care provider shall make the revocation a part of the declarant's medical

record."

Section 3. Section 50-9-204, MCA, is amended to read:

"**50-9-204. Immunities.** (1) In the absence of actual notice of the revocation of a declaration, the following, while acting in accordance with the requirements of this chapter, are not subject to civil or criminal liability or guilty of unprofessional conduct:

(a) a physician who causes the withholding or withdrawal of life-sustaining procedures from a qualified patient;

(b) a person who participates in the withholding or withdrawal of life-sustaining procedures under the direction or with the authorization of a physician;

(c) emergency medical services personnel who cause or participate in the withholding or withdrawal of life-sustaining procedures under the direction of or with the authorization of a physician OR WHO ON RECEIPT OF RELIABLE DOCUMENTATION FOLLOW A LIVING WILL PROTOCOL;

(D) EMERGENCY MEDICAL SERVICES PERSONNEL WHO ~~AFTER A GOOD FAITH ATTEMPT TO DO SO ARE UNABLE TO FIND RELIABLE DOCUMENTATION OF A DECLARATION AND~~ PROCEED TO PROVIDE LIFE-SUSTAINING TREATMENT TO A QUALIFIED PATIENT PURSUANT TO A REVOCATION COMMUNICATED TO THEM; AND

~~(c)~~(d)(E) ~~the~~ a health care facility in which ~~the~~ withholding or withdrawal occurs.

(2) A physician is not subject to civil or criminal liability for actions under this chapter that are in accord with reasonable medical standards."

NEW SECTION. **SECTION 4.** AUTHORITY TO ADOPT RULES. THE DEPARTMENT MAY ADOPT RULES TO IMPLEMENT THIS CHAPTER.

NEW SECTION. **SECTION 5.** CODIFICATION INSTRUCTION. [SECTION 4] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 50, CHAPTER 9, AND THE PROVISIONS OF TITLE 50, CHAPTER 9, APPLY TO [SECTION 4].

~~NEW SECTION. **Section 6.** Applicability. [This act] applies to declarations made after [the effective date of this act].~~

NEW SECTION. **SECTION 6.** EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

-End-